

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

=====X
ANDREW BOTTARI,

Index No.: 07 civ 8192

Plaintiff,

VERIFIED ANSWER

- against -

DAVID FISHER and MICHAEL STEVENSON,
Employees of the Village of Ardsley Police
Department,

Defendants

=====X

Defendants named herein as **DAVID FISHER and MICHAEL STEVENSON, Employees of the Village of Ardsley Police Department**, by its attorneys, **HODGES, WALSH & SLATER, LLP**, as and for an Answer to plaintiff's Complaint dated September 20, 2007, allege upon information and belief as follows:

AS AND FOR AN ANSWER TO NATURE OF THE ACTION

1. These answering defendants deny each and every allegation set forth in paragraph "1" of plaintiff's complaint.

AS AND FOR AN ANSWER TO JURISDICTION AND VENUE

2. These answering defendants deny each and every allegation set forth in paragraphs "2", and "3" of the plaintiff's complaint.
3. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs designated "4", "5", and "6" of plaintiffs' Complaint.
4. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "9" of

plaintiffs' Complaint, and respectfully refers all questions of law to the Honorable Court.

AS AND FOR AN ANSWER TO FACTS UNDERLYING PLAINTIFF'S CLAIMS FOR RELIEF

5. These answering defendants deny each and every allegation set forth in paragraphs "11", "13", "15", "16", "18", "20", "21", "22", "23", "24", and "25", of plaintiff's complaint.
6. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs designated "17", and "19", of plaintiffs' Complaint.

AS AND FOR AN ANSWER TO FIRST CLAIM FOR RELIEF FOR VIOLATING PLAINTIFF'S RIGHT TO BE FREE FROM UNREASONABLE SEIZURES UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

7. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated '26' of plaintiff's Complaint.
8. These answering defendants deny each and every allegation set forth in paragraphs "27" and "28", of plaintiff's complaint.

AS AND FOR AN ANSWER TO SECOND CLAIM FOR RELIEF TO BE FREE FROM UNREASONABLE SEIZURES UNDER ARTICLE ONE, SECTION TWELVE OF THE NEW YORK STATE CONSTITUTION

9. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set

forth at length herein in responding to paragraph designated '29' of plaintiff's Complaint.

10. These answering defendants deny each and every allegation set forth in paragraphs "30" and "31", of plaintiff's complaint.

AS AND FOR AN ANSWER TO THIRD CLAIM FOR RELIEF FOR VIOLATING PLAINTIFF'S RIGHT TO BE FREE FROM UNREASONABLE FORCE UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

11. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "32" of plaintiff's Complaint.

12. These answering defendants deny each and every allegation set forth in paragraphs "33" and "34", of plaintiff's complaint.

AS AND FOR AN ANSWER TO FOURTH CLAIM FOR RELIEF FOR VIOLATING PLAINTIFF'S RIGHT TO BE FREE FROM UNREASONABLE FORCE UNDER ARTICLE ONE, SECTION TWELVE OF THE NEW YORK STATE CONSTITUTION

13. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "35" of plaintiff's Complaint.

14. These answering defendants deny each and every allegation set forth in paragraphs "36" and "37", of plaintiff's complaint.

AS AND FOR AN ANSWER TO A FIFTH CLAIM FOR RELIEF FOR MALICIOUS PROSECUTION IN VIOLATION OF PLAINTIFF'S RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

15. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "38" of plaintiff's Complaint.
16. These answering defendants deny each and every allegation set forth in paragraphs "39", "40", "42", of plaintiff's complaint.
17. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "41" of plaintiffs' Complaint, and respectfully refers all questions of law to the Honorable Court.

AS AND FOR AN ANSWER TO SIXTH CLAIM FOR RELIEF FOR FAILURE TO INTERVENE TO PREVENT THE VIOLATION OF PLAINTIFF'S CIVIL RIGHTS

18. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "43" of plaintiff's Complaint.
19. These answering defendants deny each and every allegation set forth in paragraphs "44" and "45", of plaintiff's complaint.

AFFIRMATIVE DEFENSES

20. The plaintiff's claims are barred by her failure to comply with the applicable provisions of the General Municipal Law of the State of New York.
21. The defendants are entitled to qualified immunity.

22. The defendants are entitled to absolute immunity.
23. The defendants' conduct was based upon probable cause.
24. The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.
25. The defendants acted in good faith and without malice.
26. The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.
27. The plaintiff's damages, if any, were caused and/or contributed to be reason of the improper and unlawful acts of the plaintiff.
28. The plaintiff's damages, if any, were created and caused, in whole or in part, by the plaintiff's failure to take steps to mitigate such damages.
29. The plaintiff's claims do not rise to the level of a constitutional violation as against these defendants.
30. The actions of the plaintiff were a motivating factor for the conduct of the defendants complained of in the plaintiff's complaint.

Dated: White Plains, New York
October 18, 2007



PAUL E. SVENSSON (3403)
Hodges Walsh & Slater, LLP
Attorneys for Defendants
55 Church Street
White Plains, NY 10601

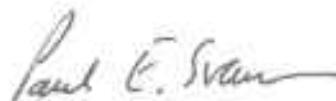
To: Matthew Flamm
Attorney for the Plaintiff
26 Court Street, Suite 600
Brooklyn, NY 11242
718-797-3117

VERIFICATION

STATE OF NEW YORK)
 SS.:
COUNTY OF WESTCHESTER)

I, THE UNDERSIGNED, AM AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF THE STATE OF NEW YORK, AND SAY THAT: I AM THE ATTORNEY OF RECORD, OR OF COUNSEL WITH THE ATTORNEY OF RECORD, FOR THE DEFENDANTS, **DAVID FISHER and MICHAEL STEVENSON, Employees of the Village of Ardsley Police Department.** I HAVE READ THE ANNEXED **VERIFIED ANSWER**, KNOW THE CONTENTS THEREOF, AND THAT SAME ARE TRUE TO MY OWN KNOWLEDGE, EXCEPT THOSE MATTERS THEREIN WHICH ARE STATED TO BE ALLEGED UPON INFORMATION AND BELIEF, AND AS TO THOSE MATTERS THEREIN NOT STATED UPON KNOWLEDGE, IS BASED UPON THE FOLLOWING: MATERIAL IN THE FILE, INFORMATION AND DOCUMENTS CONTAINED IN SAID FILE.

Dated: White Plains, New York
October 18, 2007



PAUL E. SVENSSON

AFFIDAVIT OF SERVICE

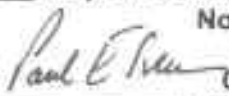
STATE OF NEW YORK)
 SS.:)
COUNTY OF WESTCHESTER)

TRACIE TOBACCO being duly sworn, deposes and says:

I am employed by the law firm of HODGES, WALSH & SLATER, LLP, counsel for Defendant in the above action and I am over the age of 18 years and I am not a party to this action. On October 18, 2007 I served a true copy of the annexed **Verified Answer** in the following manner; by mailing same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys in this action as indicated below:

TO: Matthew Flamm
Attorney for the Plaintiff
26 Court Street, Suite 600
Brooklyn, NY 11242
718-797-3117


TRACIE TOBACCO

Sworn to before me this
18th Day of October, ~~2007~~ 2007 L. E. SVENSSON
Notary Public - State of New York
No. 02SV6089565

Qualified in Dutchess County
My Commission Expires 03/24/2011
Notary Public